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generally agree that the intention of the parties determines whether or not the contract is entire. The intention is to be gathered from the language used and the nature of the subject-matter. See *Dick v. Riddle* (1909) 139 Mo. App. 584, 589, 123 S. W. 486, 487; see *Hodson-Feenaughty Co. v. Coast Culvert and Flume Co.* (1919, Ore.) 178 Pac. 382, 388. Where the performance, left incomplete by the promisor, required further expenditure of work or materials to fit it to the purpose designed by the promisee, the contract was held entire. *School District v. Dauchy* (1857) 25 Conn. 530; *International Contracting Co. v. United States* (1911) 47 Ct. Cl. 158; see *Shinn v. Bodine* (1869) 60 Pa. 182, 185. It has been held that where the price was to be paid in a lump sum, the contract was entire. *Collins v. Frazier* (1919, Ga.) 98 S. E. 188; *Pitcairn v. Phillip-Hiss Co.* (1902, D. Pa.) 113 Fed. 492. Where the performance consists of separate and distinct items and the price is apportioned to each, the contract has usually been construed as severable. *Amsler v. Bruner* (1912) 173 Ill. App. 337; *Parkersburg & Marietta Sand Co. v. Smith* (1915) 76 W. Va. 246, 85 S. E. 516. But the fact that the price is apportioned is not conclusive. *Steere v. Formilli* (1918, Calif.) 175 Pac. 806; *Grassman v. Bonn* (1880, Ch.) 32 N. J. Eq. 43. In the instant case the express stipulation that the contractor should bear the risk of loss of work and materials, taken with the fact that the parties seem to have contemplated a complete sea-wall, justifies the holding that the contract is entire.

CONTRACTS—ILLEGALITY—OPTION CONTRACTS FOR FUTURE DELIVERY.—In consideration of $80.00 the defendant gave to the plaintiff an option on 8,000 bushels of corn for December delivery at $1.40 per bushel. On the plaintiff's election to purchase the corn, the defendant refused to deliver, claiming that it was a gaming contract and therefore illegal. The plaintiff brought an action for breach of contract for the sale and delivery of the corn. *Held,* that he should recover. *Yontz v. McVean* (1920, Mo.) 217 S. W. 1000.

Contracts in which the parties intend to wager on the future price of a commodity with the understanding that no delivery is to be made, but that there shall be a mere "settlement of differences," are illegal and unenforceable. *Raymond v. Parker* (1911) 85 Conn. 694, 81 Atl. 1030; *Lamson v. Bane* (1913, C. C. A. 8th) 206 Fed. 253. The illegality of such transactions is determined by whether or not there was an actual intent on the part of both the plaintiff and the defendant to deliver, make payment for, and receive the commodities. See *Graff v. Moench* (1913) 181 Ill. App. 127, 130; see *Rogers v. Marriott* (1900) 59 Neb. 759, 772, 82 N. W. 21, 24. Option contracts in which there is actually an intention to deliver if the option is exercised, are likewise valid. *Schmidt v. Marine Milk Condensing Co.* (1915) 197 Ill. App. 279; *Waters-Pierce Oil Co. v. Progressive Gin Co.* (1916) 59 Okla. 262, 159 Pac. 349. An option contract for future delivery, as in the instant case, is valid even where the seller does not at the time of giving the option own the goods. *Wiggin v. Federal Stock & Grain Co.* (1905) 77 Conn. 507, 59 Atl. 607; *Sawyer Wallace Co. v. Taggart* (1879, Ky.) 14 Bush, 727. If one party intends actual delivery, but the other intends a "settlement of differences" only, the contract may be enforced at the option of the one intending actual delivery. *Merriam & Millard Co. v. Cole* (1917, Tex. Civ. App.) 198 S. W. 1054; *Donovan v. Daiber* (1900) 124 Mich. 49, 82 N. W. 848; *contra, Elmore-Schultz v. Stonebraker* (1919, Mo.) 214 S. W. 216. A few courts have tried to lay down general rules for determining this intention to deliver. The majority of these courts hold that where nothing is said about actual delivery, the presumption is that the contract is legal and the burden of proof is upon the defendant to show its illegality. See *Lamson Bros v. Mensen* (1919, Iowa) 174 N. W. 689; see *Miller Co. v. Klovstad* (1905) 14 N. D. 435, 105 N. W. 164; see Anson, *Contract* (3d Am. ed. by Corbin, 1919) 281, note; *contra, Pate v. Wilson Bros. Mercantile Co.* (1919, Tex. Civ. App.) 209 S. W. 187. It

seems evident, however, that these rules cannot be relied upon with certainty. In this connection, it has been held that where the contract, though legal on its face, is so made that its undisclosed but real purpose is to deal in cotton futures, parol evidence is admissible to establish the real intention of the parties. *Talbot & Son v. Martindale* (1919, Tex. Civ. App.) 211 S. W. 302. For an accurate analysis of option contracts, see Hohfeld, *Fundamental Legal Conceptions* (1913) 23 YALE LAW JOURNAL, 16, 44; see Corbin, *Option Contracts* (1914) 23 YALE LAW JOURNAL, 641.

CRIMINAL LAW—MURDER—INTOXICATION AS AN EXCUSE.—The accused, in the act of violating a young girl, placed his hand upon her mouth to quiet her thereby causing her death by suffocation. The lower court assumed that the accused had the intent to rape, but on the ground of intoxication reduced the verdict from murder to manslaughter. *Held,* that the verdict of murder should be restored, since the death was caused by an act of violence done in furtherance of a felony. *Director of Public Prosecutions v. Beard* (1920, H. L.) 36 Times L. R. 379.

An unlawful homicide, perpetrated in the commission of an offense amounting to a felony, is generally held to be murder. *State v. Cross* (1900) 72 Conn. 722, 46 Atl. 148; *Regina v. Serne* (1887, Cent. Cr. Ct.) 16 Cox C. C. 311. Formerly drunkenness was held to aggravate, rather than excuse or mitigate a crime. See Hale, *Pleas of the Crown* (1778) 32; see 4 Blackstone, *Commentaries* (21st ed. 1852) 26. A few isolated cases in the United States have held that drunkenness was not a fact to be considered in determining the degree of the crime. *United States v. McGlue* (1851, C. C. D. Mass.) 1 Curtis, 1; *Commonwealth v. Hawkins* (1855, Mass.) 3 Gray, 463; *State v. Brown* (1904) 181 Mo. 192, 79 S. W. 1111. Where a person with the intention of killing becomes intoxicated, though at the time of the killing he was too drunk to form any intent whatsoever, the intoxication is no excuse. *Cook v. State* (1903) 46 Fla. 20, 35 So. 665; *State v. Robinson* (1882) 20 W. Va. 713. But intoxication such that the person is incapable of forming an intent always reduces murder from the first to the second degree, unless the intention to kill existed before the intoxication. *People v. Rogers* (1858) 18 N. Y. 9. But the usual rule would seem to be that it does not reduce the offense from murder in the second degree to manslaughter. *State v. Johnson* (1874) 41 Conn. 584; *Atkins v. State* (1907) 119 Tenn. 458, 105 S. W. 353. In some cases where the rule is apparently contrary, the cases are based upon the statutory requirement of a specific intent for murder. *State v. Rumble* (1909) 81 Kan. 16, 105 Pac. 1; *Perryman v. State* (1916) 12 Okla. Cr. 500, 159 Pac. 937; see Cook, *Act, Intention, and Motive in the Criminal Law* (1917) 26 YALE LAW JOURNAL, 645. A number of jurisdictions require the existence of a specific intent to do at least serious bodily harm to constitute the crime of murder. As a logical result in those jurisdictions such a degree of intoxication reduces the crime to manslaughter. *State v. Corrivau* (1904) 93 Minn. 38, 100 N. W. 638; *Springfield v. State* (1892) 96 Ala. 81, 11 So. 250. England follows this doctrine. *Regina v. Doherty* (1887, Cent. Cr. Ct.) 16 Cox C. C. 306. The instant case appears to be entirely sound on its facts and in accord with the English concept of the crime of murder.

FRAUD—PROMISSORY STATEMENTS—INTENTION NOT TO PERFORM—A MISREPRESENTATION OF FACT.—The plaintiffs represented that they would use honest methods to increase the defendant's sales. The defendant gave six promissory notes in consideration of the plaintiffs' promise to organize and manage contests to produce this result. The plaintiffs did nothing in the work of organization and fraudulently cast votes to keep the few contestants close. The defendant demanded the return of the three notes remaining unpaid, and the plaintiffs sued to recover on them. *Held,* that the plaintiffs should not recover, because the